

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000041-MR

HEIDI LYNNE YOST

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE HUGH SMITH HAYNIE, JUDGE
ACTION NO. 01-FC-009047

MARK RANDALL CORNER

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, BUCKINGHAM, AND McANULTY, JUDGES.

BARBER, JUDGE: Appellant, Heidi Lynn Yost (Yost), appeals the rulings of the Jefferson Family Court with regard to child support owed by the Appellee, Mark Randall Corner (Corner). We affirm the family court's determination.

Yost and Corner were married for four years. During that time the parties had one minor child. Yost filed for dissolution of marriage on December 21, 2001. Corner failed to respond to Yost's petition. On February 11, 2002, the family court found Corner in default of his duty to answer the petition

for dissolution. The court referred the case to the Domestic Relations Commissioner ("DRC") for determination of child support. Corner failed to appear for the hearing before the DRC. The DRC found that Corner's annual income was \$49,000 from employment, and \$14,000 a year in commission from the United States Navy. The DRC found that Corner should pay child support in the sum of \$883.89 per month. Sole custody of the minor child was granted to Yost.

On July 19, 2002, the family court entered a decree of dissolution, and incorporated the findings and recommendations of the DRC. On March 22, 2004, Corner filed a motion to modify custody and to reduce child support. The family court denied the motion to modify custody. A hearing was held on July 22, 2004, on the motion to reduce child support. As a result of that hearing, the court reduced the child support obligation and granted Corner the right to claim the child as a deduction for tax purposes.

Yost filed a motion to alter, amend or vacate the family court's ruling. Yost claimed that Corner was one of two beneficiaries to an estate containing personal property valued at \$154,318.20 and real property with a value of \$129,000. Yost also contended that Corner had failed to provide sufficient evidence of his annual income. The family court denied Yost's motion.

On appeal, Yost argues that the child support initially set by default by the family court cannot be modified downward, or decreased. Yost cites KRS 304.211(5) which specifically provides that a child support order set by default may be modified "upward." Yost argues that the omission of a downward modification of support shows that the legislature did not wish a downward modification to be possible. The family court held that a default child support obligation may be modified in the same manner as any other child support obligation.

This Court has held:

We disagree with Millard and hold that the reasoning of the trial court in Wiegand and Giacalone is controlling. KRS 403.213 applies to "any" action to modify an award of child support. If the legislature intended an exception for an agreement entered into by the parties pursuant to KRS 403.211(3), it could have added one to the statute. Where there are no exceptions to statute provided by the legislature, it is presumed that none were intended. Rhodes v. Rhodes, 764 S.W.2d 641, 643-644 Ky.App. (1988). Finally, KRS 403.211 was already in effect on the day 403.213 became effective, and the legislature is presumed to be aware of existing law when it enacts a statute. Commonwealth Dept. of Banking & Securities v. Brown, Ky., 605 S.W.2d 497, 498 (1980).

Tilley v. Tilley, 947 S.W.2d 63, 65 (Ky.App. 1997). A trial court has the discretion to modify a child support award within

the guidelines mandated by the statutes. Com. Ex Rel. Marshall v. Marshall, 15 S.W.3d 396, 400 (Ky.App., 2000).

Corner claimed his annual income to be \$25,000 from his business, and \$15,000 in a pension from the navy. The family court ruled that Corner had chosen to start the closely held business, and that he could choose what to pay himself from the profits of that business. The court assigned Corner an annual business income of \$40,000 and the pension of \$15,000 annually. The court also found that Corner had inherited the sum of \$40,000 in 2003.

Yost claims that the family court failed to correctly include Corner's inheritance in its determination of his income and assets. Corner testified to a \$40,000 inheritance. Yost claims a much higher inheritance, but provides no evidence supporting her claims. Yost argues that the inheritance should be added to Corner's income, increasing his annual income substantially. The court did not include the inheritance as income. KRS 403.212(2)(b) does not include inheritance as income.

A one-time inheritance is not properly considered as increasing the beneficiary's annual income. Clary v. Clary, 54 S.W.3d 568, 569 (Ky.App. 2001). A trial court has the duty of evaluating income and assets in determining child support. Snow v. Snow, 24 S.W.3d 668, 673 (Ky.App. 2000). The trial court's

determination is not reversible in the absence of a showing of an abuse of discretion. Clary v. Clary, supra., 54 S.W.3d at 570. No such an abuse has been shown by Yost.

Yost also contends that the two pay stubs provided by Corner are insufficient evidence of annual income. KRS 403.212(2) requires proof of current and past income upon which a child support determination may be made. The family court noted in its ruling that the business was a new one, having been in existence for less than six weeks at the time of the hearing, and that for this reason, there were no tax returns or other supporting documents showing annual income, profit or loss. The court found that Corner had showed the 15% reduction in income necessary for modification of a child support order, pursuant to KRS 403.213(2). The trial court was within its discretion in making this ruling.

Yost claims that the assignment of the annual tax deduction for the minor child to Corner was in error. The family court held that such an assignment maximized the child support payable. The family court relied upon Pegler v. Pegler, 895 S.W.2d 580, 581 (Ky.App. 1995) in making that ruling. The court has great discretion in determining how best to benefit the child. Yost has failed to show that the family court's order caused a financial detriment to the child. Under such

circumstances, no reversible error is shown. We affirm the Jefferson Family Court's ruling.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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